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C O N F I D E N T I A L SECTION 01 OF 04 PHNOM PENH 000422

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STATE FOR EAP/MLS, S/WCI; USUN FOR JAMES DONOVAN

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SUBJECT: THE ECCC AND OSJI

Classified By: Pol/Econ Chief Margaret McKean; Reason: 1.4 (b) and (d)

11. (SBU) Summary. The Open Society Justice Initiative's (OSJI) mid-February press statement highlighting an ongoing UNDP audit into the Extraordinary Chambers' hiring practices as well as possible corruption and kickback allegations continues to be a front burner issue in Cambodia. While the RGC reaction and subsequent OSJI response were simply a war of words, more recent information suggests that the RGC is planning retaliatory action that may effectively close OSJI's office in Phnom Penh. On March 13, former U.S. Ambassador David Scheffer briefed a number of foreign diplomats regarding the possible consequences of a closure of the OSJI monitoring operation. UN staff on the ECCC have briefed the international judges of the situation; international judges currently in Phnom Penh for the internal rules review session are concerned, and reportedly have urged the UN OLA to respond. End Summary.

OSJI in the Hot Seat

12. (C) On February 14, the OSJI released a press statement calling for a thorough investigation of corruption allegations against ECCC Cambodian judges and staff. The statement requested that the results of the ongoing UNDP audit looking into the allegations be released publicly. OSJI said that if the allegations were proven to be true, the ECCC should take immediate measures to address vulnerabilities. OSJI has been concerned about such allegations, which the organization has heard from different sources both inside and outside the ECCC. The RGC response has been predictable: DPM Sok An issued several blistering statements to the press and ECCC Administrator Sean Vissoth wrote a strong letter dated February 16 to OSJI's resident representative Heather Ryan saying that OSJI would receive no further cooperation from his office. A letter from OSJI's Jim Goldston was published in the Cambodia Daily newspaper on March 7, outlining OSJI's history of support for the Tribunal but emphasizing that as a monitoring organization, OSJI could not ignore the allegations. (Note: Although Goldston never referred to Prime Minister Hun Sen by name in his letter, the PM reportedly was enraged over the reference to RGC political officials whose commitment to the ECCC has long been in doubt. End Note.) By bringing them to light early in the process, Heather Ryan told us that OSJI hoped that the ECCC would heed OSJI's recommendations for dealing with the charges. She argued that other international tribunals had experienced similar problems, dealt with them as painful as

they were, and moved on. Cambodia should be no different, she said. International ECCC staff publicly declared their continued support for OSJI's monitoring work and indicated they would meet with OSJI staff. (Comment: A subtext to this issue was the quiet departure of Heather Ryan's chief Cambodian staff member to Singapore following the issuance of the February 14 press release; he returned after a couple weeks and when OSJI was convinced there would be no threat to his security. End Comment.)

13. (C) On March 8, the Cambodian judges to the ECCC publicly asked the OSJI to exonerate them from any suspicion that they were implicated in any corruption allegations, and one judge asked for OSJI to retract its earlier statement. With the issue coming to a head when the international judges arrived in Phnom Penh to continue their deliberations with the Cambodian judges over the draft internal rules, many observers feared that the OSJI flap might derail the talks. However, initial reports of the discussions were promising, and sources at the ECCC hoped that the two issues might be dealt with separately so that the controversy over OSJI would not poison prospects for a successful review committee session and agreement on the draft rules finalized before the international judges were scheduled to leave on March 16.

14. (C) On March 10, OSJI received information that the RGC might be planning to evict OSJI from Cambodia and end cooperation on its monitoring role. OSJI had received reports from ECCC staff that the issue had moved into the political realm for the government, and the PM reportedly had agreed that the office could be closed. DPM Sok An was considering the timing of any action, and OSJI believed that the RGC planned to wait until after the review committee's work was done before moving ahead with any plan. There was

PHNOM PENH 00000422 002 OF 004

also talk, reportedly, that Heather Ryan's visa might be canceled so that she would have to leave the country. At this stage, the information OSJI had received was perceived to be sketchy, and it was not clear that the RGC had made any firm decisions. OSJI did not want to alarm donors or the judges for fear of ruining the still-positive negotiations.

David Scheffer Returns to Cambodia

15. (C) On March 11, former Ambassador at large for War Crimes David Scheffer met with Sean Vissoth, and Vissoth confirmed for Scheffer that he (Vissoth) had been instructed by DPM Sok An to construct a chronology of the OSJI affair that would be used as part of the government's plan to shut down the office. Vissoth said that the order had been given at a recent wedding ceremony where the PM and other senior officials had discussed the matter. Vissoth had no firm deadline, and told Scheffer that he did not want to carry out the order. He requested that Scheffer alert the U.S. Embassy and the Ambassador so that a pre-emptive intervention with DPM Sok An might be made to turn off the RGC's plan. On March 12, Scheffer met with the Ambassador and Pol/Econ Chief and outlined what Vissoth had said. The Ambassador offered to host a briefing by Scheffer for other diplomats so that they could factor the information into their own meetings. Scheffer said his key concern was that OSJI's departure would almost certainly be interpreted by the UN legal office as a breach of the UN/RGC agreement (Article 12, subparagraph 2). He wondered if the RGC fully understood the implications of closing down the only international monitoring body.

16. (C) Scheffer also made clear that he personally believed OSJI had made a mistake in their handling of the UNDP audit by going public so quickly. He noted that his understanding was that OSJI believed the matter was heading for the international wire services and that the organization wanted to have a press statement ready to issue in conjunction with the news going public. Unfortunately, the OSJI press release outpaced any other public mention of the audit, and therefore

OSJI became the organization that exposed the story. Scheffer noted that the RGC interpreted this result as "bad faith" on the part of OSJI since OSJI had not first sought a meeting with RGC officials to express concern about corruption.

17. (C) On March 13, Scheffer and the Ambassador met with representatives of the French, Japanese, British, German, Canadian, and Australian embassies and Scheffer provided them with a briefing on the OSJI issue, as well as an update of the discussions on the internal rules. On the former subject, Scheffer noted that the senior UN legal staff member had informed the international judges of what was happening with OSJI; ECCC staff members had heard that the press might have gotten wind of the RGC's plan to remove OSJI from the country, and the UN legal officer decided that he should explain what was happening rather than have the judges read it in the press after their departure. All the international judges expressed concern about any action by the RGC to close OSJI and believe it might be a violation of the relevant portion of the UN/RGC agreement regarding monitoring. However, they were split over how to address the situation. Judge Marcel Lemonde reportedly wanted to approach the problem cautiously for fear of derailing the rules process. Others were concerned that if they did not act during their time in Cambodia, their leverage with the RGC would be less effective later. The judges asked Michelle Lee to write to the UN legal office about the issue to ensure New York was aware; we understand the UN legal office is prepared to respond but wants to wait until after the rules review committee finishes this week so as not to disrupt the work.

18. (SBU) The Ambassador discussed with those at the Scheffer briefing the possibility of a joint demarche with the RGC. Missions expressed disappointment over how OSJI has conducted itself and precipitated its current problems with the RGC, but most also agreed that it would be useful for the government to understand the possible consequences of its actions vis-a-vis the UN/RGC agreement. The individual response by the diplomats at the meeting was expected: the French and Japanese Ambassadors, though in the country, did not come but sent lower officials; neither offered any

PHNOM PENH 00000422 003 OF 004

comments nor signs of support for joint action. The UK, German, and Canadian reps said they would be willing, but thought that the absence of any French and Japanese involvement (as co-chairs of the Friends of the ECCC donor group) meant any demarche would not be taken seriously by the RGC. The Australian DCM wanted to consult with Canberra, but noted that his Ambassador had farewell calls the following day with the PM and DPM Sok An, and would raise the issue. In the meantime, David Scheffer offered to seek assurances from OSJI/New York that future disclosures of information potentially damaging to the ECCC would be provided to the court with adequate notice and advance consultation before going to press. (Note: Goldston emailed Scheffer a note along the requested lines on March 14; we distributed the note to the donors. End Note.)

But What About Those Allegations?

19. (C) In the midst of the continuing stream of press articles about OSJI and attention to the review committee's progress and prospects for success, the allegations over corruption and kickbacks have been nearly forgotten. UN Human Rights Office director Margo Picken noted that the RGC plays these issues very skillfully and the OSJI matter follows a familiar pattern. Instead of addressing the accusations of government shortcomings, the government sidesteps the real issue and heaps blame upon the organization/individual highlighting the problem. Her office and its Special Rapporteur have been on the receiving end of the government's ire, so are sympathetic to OSJI's

predicament.

¶10. (C) With respect to the allegations, we have heard (but cannot confirm) that the UNDP audit has been completed and recommended that an investigation be done as the next step. If true, this would not necessarily mean that the audit confirmed corruption had occurred at the ECCC; rather, it would mean that there was sufficient information uncovered to warrant further investigation. One senior ECCC staff member has told us that there exists a videotape of an ECCC official admitting that the kickback system exists at the court. Sources familiar with the court and the allegations suggest that an investigation team skilled at dealing with such issues would likely be able to develop a case. One Cambodian staff member who claims to be subjected to the system reportedly has thanked ECCC international staff for bringing the matter to OSJI and the public's attention, so that hopefully something may be done to stop the practice. (Comment: Kickbacks are common in the Cambodian public sector; allegations that kickbacks may be occurring at the court surprised no one. We understand that some ECCC international staff members are well aware that the practice exists because their Cambodian colleagues have told them; however, Cambodians are very reluctant to file complaints or publicly acknowledge the existence of corrupt practices. No whistleblower culture exists, and people have legitimate fears when it comes to making public information that could be embarrassing to senior officials. End Comment.)

Comment

¶11. (C) There are interesting aspects to this problem that warrant mention. First, it is notable that Sean Vissoth took a very proactive position on behalf of OSJI on this matter, informing us about the RGC plan as well as urging that the international community weigh in before the government takes steps that would not be easily corrected. On the allegations themselves, concerned ECCC staff and OSJI believe that the issue about corruption should be addressed; otherwise, defense counsel may raise it at the outset of the trials in conjunction with an opening argument challenging the legitimacy of the court and the competence/integrity of the Cambodian judges. The head of the ECCC's defense office, Rupert Skilbeck, has allowed that such a tactic is a possibility. Finally, the government's (over)reaction to the OSJI press release reveals again RGC officials' unease with a high-profile judicial process designed to limit political influence. While OSJI could have handled this matter better -- especially by anticipating that PM Hun Sen would take Goldston's letter very personally -- RGC sensitivities cannot be allowed to derail what must be a non-political tribunal.

PHNOM PENH 00000422 004 OF 004

It is very difficult for the RGC to relinquish control over a process where news cameras recording excerpts of the trial proceedings may be beaming testimony all over the globe.

¶12. (SBU) Comment continued: It is still unclear whether the international and Cambodian judges will be able to finalize the rules before the March 16 deadline, but reports for the last two days have been promising. While this question is more significant as a measure of the court's ability to stand up a credible system, we fear it is overshadowed at the moment in the, at times very personal, dispute over OSJI. End Comment.
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